Supreme Court of the United States

OCTOBER TERM, 1933

No. 94

M. D. HICKLIN, INDIVIDUALLY, AND AS A REPRESENTATIVE OF CLASS "F" CARRIERS WITHIN THE PROVISIONS OF SECTIONS 8507–8530 OF CHAPTER 162 OF THE SOUTH CAROLINA CODE OF 1932, WHO ARE, OR CLAIM TO BE, ENGAGED IN INTERSTATE COMMERCE, AS WELL AS INTRASTATE OPERATIONS WITHIN THE STATE OF SOUTH CAROLINA, RESPONDENT-APPELLANT,

versus

J. C. CONEY, EARLE R. ELLERBE ET AL., AS MEMBERS OF AND CONSTITUTING THE RAILROAD COMMISSION OF SOUTH CAROLINA, PETITIONERS-APPELLEES.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

BRIEF ON BEHALF OF APPELLANT

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OPINION BELOW

The opinion of the Supreme Court of the State of South Carolina is reported in 168 S. C., 440, 167 S. E., 674 (1933), and is reproduced in the record.

JURISDICTION

The final decree or judgment of the South Carolina Supreme Court was rendered on January 27, 1933.

The application for appeal therefrom was presented and the order allowing appeal entered on April 24, 1933. Service of the petition for appeal, assignments of error, statement as to jurisdiction, and order allowing the appeal was acknowledged, and issuance of citation waived, on May 22, 1933.

Probable jurisdiction has been noted by this Court.

The claims advanced in the lower Court, which are relied upon as the basis of this Court's jurisdiction, were that Act No. 170 of 1925 (XXXIV Statutes at Large, 252), now appearing, as amended from time to time, as Chapter 162 (Sections 8507–8524) of the Code of Laws of S. C., 1932, Volume III, 954, is invalid on the ground of being repugnant to the Fifth and Fourteenth Amendments to the Constitution of the United States, and to Article I, Section 8, thereof. The rulings made were that said South Carolina statute is valid and not repugnant to the Constitution.

The jurisdiction of this Court is invoked under the Acts of Congress of February 13, 1925, 43 Stat., 936, and January 31, 1928, 45 Stat., 54, appearing as Section 237 (a) of the Judicial Code (28 U. S. C. A. Section 344), providing, in part, that:

> "a final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had . . . where is drawn in question the validity of a statute of any State on the ground of being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be

reviewed by the Supreme Court upon a writ of error" (U. S. Code, Title 28, Section 344).

Under the former practice a writ of error would have been issued. This appeal is taken under Sections 861 (a) and 861 (b) of Title 28 of the United States Code, as amended April 26, 1928, and under Rule 46 of the Rules of this Court, effective July 1, 1928.

STATEMENT OF CASE

This case is before this Court on appeal. The Railroad Commission of South Carolina filed a petition in the original jurisdiction of the Supreme Court of South Carolina against this appellant "individually, and as a representative of Class 'F' carriers within the provisions of Sections 8507-8530 of Chapter 162 of the South Carolina Code of 1932, who are, or claim to be, engaged in Interstate Commerce, as well as intrastate operations within the State of South Carolina." It was alleged and admitted that the appellant was a private contract carrier, engaged in the business of transporting property for hire over the public highways of South Carolina by motor vehicle without a certificate and without having paid the license fees required under said Chapter 162, and in violation of the provisions thereof. He does not operate on a regular schedule over a specific route, nor between fixed termini. He is not a common carrier, and has never held himself out as a carrier to the public.

The statute in question was held to be unconstitutional by the District Court of the United States for the Eastern District of South Carolina in the case of *Nutt v. Ellerbe*, 56 F. (2d), 1058—decided by a three-Judge Court—the opinion wherein was filed March 9, 1932. The Railroad Commission declined to recognize the authority of that decision—although no appeal was taken therefrom—except as to the plaintiff, John P. Nutt, and continued to exact payment of Class F license fees from appellant and other contract carriers. Shortly before the institution of this action the appellant had filed a suit on behalf of himself and such other Class F, or contract, carriers as desired to participate therein and contribute to the cost thereof, against the Railroad Commission, in the said District Court of the United States for the Eastern District of South Carolina, for the purpose of having said statute declared unconstitutional and restraining the Railroad Commission from further enforcing the same. This action was then begun in the original jurisdiction of the Supreme Court of South Carolina avowedly to have the said statute construed

by that Court and enforced by mandatory injunction, and admittedly for the purpose of forestalling a decision by the said District Court and ousting it of jurisdiction.

Appellant interposed a demurrer to the petition, but, when the case was called in the Supreme Court of South Carolina, the Court, over appellant's objection, heard argument on the merits, as well as on the demurrer, although no testimony had been offered in support of the petition, and appellant's request to be allowed to offer testimony in his behalf was denied.

In reaching its conclusion that the statute in question, as construed and applied to the appellant, which, according to the plain and natural meaning of its provisions, required him, as a private carrier, to assume the duties, burdens and obligations of a common carrier and become subject to the same rules and regulations, was constitutional, the Court specifically ruled that, notwithstanding the status of appellant as a private carrier, he was nevertheless subject to those provisions of Chapter 162 requiring him to obtain a certificate, pay certain license fees, and carry certain kinds of insurance; but that the provisions of the statute requiring all carriers for hire to carry cargo insurance were intended by the legislature to apply to Class D, or common, carriers, only, and not to appellant. In other words, all of those provisions of the statute, applicable by its terms to both classes of carriers, which did not serve to render the statute unconstitutional as to contract carriers, were held to be valid and applicable to both common and contract carriers; but those provisions of the statute which, if applied to contract carriers, would render the same unconstitutional, were arbitrarily declared inapplicable, as to them, although no such differentiation was pointed out in the statute itself.

SPECIFICATIONS OF ERROR

The ultimate error assigned is that the Supreme Court of South Carolina erred in holding as a matter of law that Chapter 162 of the Code of Laws of S. C., 1932, as construed and applied to this appellant, was a lawful and constitutional stat-

ute. The detailed specifications of error (all of which, except the fourth and fifth, are intended to be urged here), are set forth in the assignments of error.

THE STATUTE INVOLVED*

Chapter 162 of the Code of Laws of S. C., 1932, provides for the supervision and regulation by the Railroad Commission of South Carolina and also for the taxation of all motor-vehicle carriers of persons or property for compensation over the improved public highways of the State.

In Sec. 8507 (d) the term "motor-vehicle carrier" is defined to mean every corporation or person, their lessees, trustees or receivers, owning, controlling, operating or managing any motor propelled vehicle not usually operated on or over rails, used in the business of transporting persons or property for compensation over any improved public highway or streets as hereinafter defined, in this State.

By Sec. 8508 all corporations and persons are prohibited from operating any motor-propelled vehicle for transportation of persons or property for compensation on any improved public highways in the State except in accordance with the provisions of said Chapter 162, and subject to the control, supervision and regulation of the Railroad Commission: *"Provided, however,* That nothing in sections 8507 to 8524 contained shall apply to motor vehicles while used exclusively for transporting persons to and from schools, Sunday schools, or religious services of any kind, or to or from picnics or upon special prearranged excursions, or to United States mail carriers operating star routes, while engaged solely in carrying mail, *or to farmers or dairymen, hauling dairy or farm products; or lumber haulers engaged in transporting lumber and logs from the forest to the shipping points."* (Italics ours.)

By Sec. 8509 no motor vehicle carrier is permitted to "operate for the transportation of persons or property for compensation on any improved public highway in this State without

*The text of the pertinent provisions of the statute is set forth in Appendix A.

first having obtained from the Commission, under the provisions of Sections 8507 to 8524, a certificate and paid the license fee herein required. The Commission shall have the power to grant six classes of such certificates . . . ", designated, respectively, as Classes A, B, C, D, E and F.

By Sec. 8510 the different classes of certificates are defined, and the terms and conditions upon which the same shall be issued are prescribed. ". . . the commission shall have power to grant a Certificate F to any person, firm, or corporation, proposing to engage in the business commonly known as contract hauling of freight or property, and when such applicant does not propose to operate upon a regular schedule or over a regular route, or to solicit or receive patronage along the route." The foregoing provision was added to the original Act by an amendment approved the 7th day of April, 1930: see XXXVI Statutes at Large, 1068.

Section 8511 provides that:

> "The commission shall, in the granting of a certificate, require the applicant to procure and file with said commission liability and property damage insurance, or surety bond with some casualty or surety company authorized to do business in this State, on such motor vehicle or vehicles to be used in the service aforesaid, in such amount as the commission may determine, insuring or indemnifying passengers *or cargo* and the public receiving personal injury by reason of any act of negligence, and for damage to property of any person other than the assured; such policy or bond to contain such conditions, provisions, and limitations as the commission may prescribe and the same shall be kept in full force and effect, and failure to do so shall be cause for the revocation of such certificate. . . . "

Let it be observed in this connection that this section is also an amendment to the original Act, and was likewise approved on April 7, 1930: See XXXVI Statutes at Large, 1327.

Section 8512 provides for the payment by such motor vehicle carriers of certain license fees annually, graduated, as

to the first four classes, upon a mileage basis, but as to Classes E and F, as follows:

> "The holders of Certificates E and F shall annually on or before January 1 of each year pay to the commission the following fees: For vehicles of carrying capacity of not over one and one-half tons, thirty ($30.00) dollars; for vehicles of carrying capacity of over one and one-half tons and not over two tons, sixty ($60.00) dollars; for vehicles of carrying capacity of over two tons and not over three tons, one hundred twenty ($120.00) dollars; for vehicles of carrying capacity of over three tons and not over four tons, two hundred ($200.00) dollars; for vehicles of carrying capacity of over four tons and not over five tons, four hundred ($400.00) dollars; for vehicles equipped fully with pneumatic tires: for vehicles equipped fully or partially with solid tires these fees shall be doubled. The fees required of holders of Certificates C, E and F shall be in addition to any license tax or license fee charged by any municipality. . . ."

Section 8516 provides that:

> "The commission is hereby vested with power and authority and it shall be their duty to supervise and regulate every motor carrier in this State; to fix or approve the rates, fares, charges, classification and rules and regulations pertaining thereto, of each such motor carrier. . . ."

Section 8518 provides for the revocation of certificates by the commission for the willful violation of the provisions of this Chapter, or of the rules and regulations of the commission.

Section 8520 provides for the punishment of any person willfully violating any of the provisions of Sections 8507 to 8524, or any lawful order, decision, rule, regulation, direction, demand or requirement of the commission, by a fine of not less than Twenty-five ($25.00) Dollars nor more than One Hundred ($100.00) Dollars, or by imprisonment for not less than ten days nor more than thirty days.

Section 8525 provides for the payment of certain additional license fees by every owner or operator of motor vehicles engaged in transporting persons or property for compensation.

SUMMARY OF ARGUMENT

I. The South Carolina statute under review is substantially identical with the Florida statute, which was held unconstitutional by this Court in *Smith v. Cahoon*, 283 U. S., 553, and with the California statute, which was held unconstitutional by this Court in *Frost v. Railroad Commission of California*, 271 U. S., 583. In the instant case, as in the last two cited cases, the statute is a regulation of the business of transportation for compensation.

As written, the statute is plain and clear enough, encompassing both private and common carriers within the scope of all of its provisions, and, so read, is unconstitutional under the last cited cases. In its ineffectual attempt to save this statute from the fate of the California and Florida statutes, the South Carolina Court ruled, with obvious violence to the plain wording of the statute, that the provisions relative to cargo insurance were not applicable to private carriers, but declined to pass upon the question of whether the rates of such common carriers were subject to regulation by the commission, upon the ground that the commission, in plain violation of the duty imposed upon it by the statute, had so far made no attempt at such regulation. Hence, the statute, otherwise definite, becomes so vague and indefinite as to deprive appellant of his liberty and property without due process of law.

II. The appellant cannot be subjected to compliance with a statute which, on its face, is patently discriminatory. Neither the type of commodities nor the classes of persons exempted from the operation of the statute furnish a reasonable ground on which to rest this classification. *Smith v. Cahoon, supra; Nutt v. Ellerbe, supra.* The Court below attempted to differentiate between the *Cahoon case* and the case at bar upon the ground that there is a double element involved in the classification, the class of persons and the class of prod-

ucts, while there was only on element of classification involved in the *Cahoon case*, namely, the class of products. But it is respectfully submitted that this alleged justification merely intensifies the vice of the statute.

III. The license fees required of contract carriers under Section 8512 are based wholly on the "carrying capacity" of the vehicle, and, certainly as to those contract carriers engaged in interstate commerce, this tax is void, for the reason that it is not compensatory. The compensation which a State may exact of motor vehicles using its highways in interstate commerce must be based strictly upon the amount and extent of the use of the highways or it will be held to be an undue burden on interstate commerce; a flat charge based upon the capacity or weight of the vehicle alone is improper. Under the statutes of South Carolina, this license tax must be paid by an interstate carrier for a single trip into that State.

Interstate Transit, Inc., v. Lindsey, 283 U. S., 183, 51 S. Ct., 380, L. Ed., 953.

Clark v. Poor, 274 U. S., 554, 47 S. Ct., 702, 71 L. Ed., 1199.

POINT I

Chapter 162, Code of Laws of South Carolina, 1932, requires the appellant, admittedly a private carrier, to dedicate nis property to the *quasi*-public use of public transportation, thus taking his private property for public use without just compensation, and depriving him of his property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

The South Carolina statute under review is identical in many particulars with the Florida statute, which was held unconstitutional by this Court in the case of *Smith v. Cahoon*, 283 U. S., 553, 51 S. Ct., 582, 75 L. Ed., 1264, and the California statute which was also held unconstitutional by this Court in *Frost v. Railroad Commission of California*, 271 U. S., 583. The South Carolina statute and the Florida statute are set out in parallel columns in Appendix A for the purpose

of illustrating the striking similarity in their phraseology, purpose and effect.

The principal difference between the two cases last cited and the case at bar lies in the fact that under the statutes considered in the cited cases a private carrier was required to obtain a certificate of public convenience and necessity. In the South Carolina statute the difference between Class D carriers and Class F carriers lies in the fact that it is necessary to obtain a certificate of public convenience and necessity in order to qualify as a Class D operator, whereas it is only necessary to obtain a certificate in order to qualify as a Class F carrier. The term "common carrier" does not appear in the South Carolina statute in those sections relating to the regulation of carriers of property; but it is respectfully submitted that those requirements of the South Carolina statute relating to Class D certificates, namely, providing for operation over a regular route, upon regular schedules, and between fixed *termini*, the establishment of tariffs and fixed rates, and compelling an applicant for a Class D certificate to become an insurer, are the salient characteristics of a common carrier: it should be borne in mind that the original Act No. 170 of 1925, *supra*, related solely to common carrier operations, and this litigation has arisen from the fact that the Legislature subsequently amended this Act so as to include private, or contract carriers, and, by such amendment, attempted to make them subject to the rules and regulations theretofore provided as to common carriers.

The statute in question cannot be construed save as a regulation of the business of those who engage in transportation of goods for compensation on the public highways. It does not even purport to relate to public safety, and is not bottomed upon the police power of the State. That the regulation of the business of transporting persons or goods for hire, and the regulation of traffic on the public highways so as to insure safety of travel or to preserve the public highways, are separate and distinct subjects is generally recognized by the Courts. In the *Frost case, supra*, the Supreme Court of Cali-

fornia concluded that the legal effect of the provisions of the Act was to subject a private carrier to the same rules and regulations as a common carrier, thus constituting a dedication of the private property to the *quasi* use of public transportation. In the case of *Smith v. Cahoon, supra,* the Florida Court concluded that the statute under review did not require private carriers to become common carriers, even though it held specifically that the certificate of convenience and necessity as set out in the statute could be reasonably required of a private carrier as a condition precedent to his use of the highways. That construction was not upheld by this Court. In the instant case, the statute, according to the plain and natural meaning of its terms, requires a private, or contract, carrier, to obtain a certificate, to keep in force cargo insurance, and to be subjected to regulation of its rates and charges by the commission. There is nothing in the statute itself to indicate which regulatory provisions relate to the holders of Class D certificates only, in contradistinction to the holders of Class F certificates. All stand upon an equal footing. Yet, by the terms of the statute, the violation of any of its provisions, or of the rules and regulations promulgated by the commission, is made a misdemeanor, punishable by fine or imprisonment, or both. And it was specifically held in *Smith v. Cahoon, supra,* that a statute which provided no guide whereby a citizen could determine which of its provisions were applicable to him, yet imposed upon him the necessity of determining for himself and at his peril what provisions he might safely ignore, was so vague, indefinite and uncertain as to be repugnant to the Federal Constitution.

It is true that the Court below held that the Legislature did not intend to make the requirement as to cargo insurance applicable to contract carriers, and the appellees will undoubtedly urge that this Court is bound by the State Court's declaration upon that point. We submit, however, that it is within the power of this Court to review such a legal conclusion, unsupported by any testimony, just as much as it is within the power of this Court to overrule a State Court's finding that a

statute is not discriminatory when, as a matter of law, it is; *Quaker City Cab Company v. Pennsylvania*, 277 U. S., 389, just as much as it is within the power of this Court to inquire, regardless of a State Court's finding, whether or not a business is affected with a public necessity; *Wolff Packing Company v. Industrial Court*, 262 U. S., 522, just as much as it is within the power of this Court to determine the nature of a levy, whether a tax or penalty, notwithstanding the fact that a State Court has considered it to be a tax; *St. Louis Cotton Compress Company v. Arkansas*, 260 U. S., 346, 348. The two amendments to Act No. 170 of 1925, one (XXXVI Statutes at Large, 1068), providing for the issuance of Class F certificates and subjecting contract carriers to the provisions of said Act No. 170, and the other (XXXVI Statutes at Large, 1327), requiring cargo insurance, were enacted at the same session of the Legislature, and were approved by the Governor on the same date. We have been unable by any process of reasoning to discover the basis of the Court's finding to the effect that the Legislature did not intend to put common carriers and private contract carriers on the same footing with regard to cargo insurance. The attention of the Court below had been earnestly directed to the case of *Michigan Public Utilities Commission v. Duke*, 266 U. S., 570, 45 S. Ct., 191, 69 L. Ed., 445, 36 A. L. R., 1105, wherein it was held that to require cargo insurance of a private contract carrier as a condition precedent to his right to engage in business as such, in effect compelling him to become a common carrier, would render the statute repugnant to the Constitution of the United States. This doctrine was expressly recognized and affirmed in the case of *Smith v. Cahoon*, *supra*. The irresistible conclusion seems to be that the Court below recognized that it would be bound to hold the statute unconstitutional unless it found that such provisions did not apply to the appellant and other contract carriers, and arbitrarily held such to be the case.

As we understand the rule, this Court is bound by the State Court's construction only as to the meaning of a statute and

to whom it applies, and not by any legal conclusion deduced therefrom.

As to the nature and legal effect of the statutory provisions regulating private carriers, a review by this Court is not only proper, but, in substance, is the justification and foundation of its jurisdiction.

No machinery is here set up to deal with private carriers separately from common carriers. The only distinction set out in the statute is that a common carrier must obtain a certificate of public convenience and necessity, and pay license fees therefor according to one schedule, whereas the contract carrier is merely required to obtain a certificate, and to pay license fees according to a different schedule. The common carrier is licensed to operate over a regular route, upon regular schedule, and between fixed *termini*. The contract carrier is not permitted to operate upon a regular schedule or over a regular route, *or to solicit or receive patronage along the route* (italics ours), which latter provision denies him the primary and most essential right of a common carrier; yet, on the other hand, he is required to assume the burdens of a common carrier.

As lucidly stated by Mr. Justice Brandeis in *Buck v. Kuykendall*, 267 U. S., 307, 815, a certificate of public convenience and necessity

> "is not regulation with a view to safety, or to conservation of the highways, but the *prohibition of competition*. It determines not the manner of use, but the persons by whom the highways may be used . . . (it) is designed primarily to promote *good service by excluding unnecessary competing carriers.*"

No other reasonable basis for requiring contract carriers to obtain a "certificate" occurs to us, except the sordid one of raising more revenue. The commission is vested with the discretion to limit the number of common carrier certificates issued by it, but is required to issue a certificate as a contract carrier to any person who is willing to pay the fees, provided

he be willing to assume the burdens and at the same time to renounce the privileges of a common carrier.

This, we submit, constitutes a dedication of "his property to the *quasi*-public use of public transportation" (*Frost v. Railroad Commission of California, supra*), notwithstanding any ruling of the South Carolina Supreme Court to the contrary.

The ruling of the Court below in reference to the cargo insurance requirements plainly shows that the Court strained to reach a wholly forced construction in its attempt to circumvent the decisions of this Court in the *Frost, Duke* and *Cahoon cases, supra,* when it attempted to plumb the depths of the legislative mind and stated, with obvious violence to the plain wording of the statute, that the Legislature did not intend for that provision to be applicable to contract carriers. In other words it held indirectly, where the Florida Court in the *Cahoon case* had held specifically, that the Legislature had intended only those provisions, which were legally applicable to private carriers, to be applicable to private carriers, and those provisions which were legally applicable only to common carriers, to be applied to such common carriers. This, despite the fact that the whole statute is framed to regulate all persons or corporations engaged in the business of transporting persons or property for compensation by motor vehicles over the improved highways of the State. This, despite the fact that the statute specifically includes both common and contract carriers. This, despite the fact that each and every provision of the statute is directed and addressed to private and public carriers for hire alike and without distinction.

Undoubtedly the South Carolina Court was in a dilemma. As written, the statute is plain and clear enough, encompassing as it does, both private and common carriers within the scope of all its provisions and, so read, is unconstitutional under the last cited decisions. In trying to save this statute from the fate of the California, Michigan and Florida statutes, ineffectual though such effort was, the South Carolina Court is impaled upon the other horn of the dilemma. As construed

by it, the statute, otherwise definite, becomes so vague and indefinite as to deprive the appellant of his liberty and property without due process of law. By such construction the appellant and others similarly situated are not informed as to what standard of conduct is required of them lawfully to pursue their business; no norm of conduct is given them by which they can measure the legality of their case.

Appellees, as well as the Court below, seek to avoid the force of the decision of this Court in the *Cahoon case* upon the ground that that was a criminal case, whereas the instant case is a proceeding in equity. But Section 8520 of Chapter 162 makes it a crime for any one to violate any provision of the Act. Hence, the entire Act must be viewed in the light of a penal statute.

Penal provisions, in order to satisfy the first essential requirements of due process under the Fifth and under the Fourteenth Amendments, must be so clearly and definitely expressed that an ordinary man can determine in advance whether a contemplated act is within or without the law. On the other hand, they must not be so broad and elastic in their terms as to compel a man to guess at his peril whether his act is in violation of them. In short, if deviation from the standard provokes a penalty the standard must be definitely fixed. *United States, Cohen Grocery Company,* 255 U. S., 81, 89; *Weeds, Incorporated, v. United States,* 255 U. S., 109; *Cline v. Frink Dairy Company,* 274 U. S., 445, 454; *Connally v. General Construction Company,* 269 U. S., 385; *International Harvester Company v. Kentucky,* 234 U. S., 216; *Collins v. Kentucky,* 234 U. S., 634, 638; *American Seeding Machine Company v. Kentucky,* 236 U. S., 660; *United States v. Capitol Traction Company,* 34 D. C., Appeals, 595; *Louisville & N. R. Company v. Railroad Commission of Tennessee,* 19 Fed., 679; *Tozer v. United States,* 52 Fed., 917; *Commonwealth v. Louisville & N. R. Company,* 46 S. W. (Ky.), 700. By the same token, a statute, otherwise definite, is unconstitutional if made vague and indefinite by construction. *United*

States v. Reese, 92 U. S., 214, 221; *Trade Mark Cases*, 100 U. S., 82; *Yu Cong Eng v. Trinidad*, 271 U. S., 500, 517.

In the latter case, the late Mr. Chief Justice Taft, said, on page 522:

> "The effect of the authorities we have quoted is clear to the point that we may not in a criminal statute reduce its generally inclusive terms so as to limit its application to only that class of cases which it was within the power of the legislature to enact, and thus save the statute from invalidity."

And this rule should be most strictly applied to statutes which create new offenses, that is, where the sovereign state for the first time is attempting to punish a course of conduct which theretofore was recognized as legal. *United States v. Reese, supra; United States v. Brewer*, 139 U. S., 278; *United States v. Sharp*, Pet. C. C. 118, 122 (Fed. Case No. 16,264); *Northern Pac. Ry. Co. v. U. S.*, 213 Fed., 162.

POINT II

To require a certificate of the appellant, and to exempt other private carriers similarly situated from such regulation is to deny the appellant the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

Assuming *arguendo* that the State of South Carolina has the power to subject the appellant to all of the provisions and requirements of said Chapter 162 as a condition precedent to his use of its highways we submit, nevertheless, that, in the instant case, the appellant cannot be subjected to the exercise of that power by a statute which, on its face, is patently arbitrary, discriminatory and unreasonable.

Under the statute, not all private carriers are subjected to regulation; indeed not all common carriers are subjected to regulation. The proviso to Section 8508 reads:

> "*Provided, However*, That nothing in Sections 8507 to 8524 contained shall apply to motor vehicles while used exclusively for transporting persons to and from schools, Sunday schools, churches, or religious services

of any kind, or to or from picnics or upon special prearranged excursions, or to United States mail carriers operating star routes, while engaged solely in carrying mail, or to farmers or dairymen, hauling dairy or farm products; or lumber haulers engaged in transporting lumber and logs from the forest to the shipping points."

Exempt from the operation of the statute, among others, are certain classes of persons engaged in the business of transporting commodities of the principal industries of South Carolina; in short, the exemptions swallow up the rule. Our attack is based upon the discrimination between different classes of persons engaged in the same business of transporting for hire, and differing only in occupation and in the kind of commodities making up their loads.

The State, in the exercise of its police power, can undoubtedly classify the subjects of regulation; but such classification must be based upon some reasonable ground —some difference which bears a just and proper relation to the attempted classification—and is not mere arbitrary selection.

The appellees' contention in the Court below was that the foregoing proviso "was intended in fact to exempt such persons only when they were hauling their own products and not engaged in transportation for hire and that said proviso had been and was continuing to be construed by them" (Petition, paragraph 6). It is evident from the fact that, while the Court below upheld their contention that the aforesaid proviso was not in fact discriminatory, and sustained their conclusion, it denied the factual premises on which the same was based. Said the Supreme Court of South Carolina: "It will be observed that this conclusion has been reached independently of the construction placed by the railroad commission upon the contested provision of the Act. We think that this construction is in part, unsound. One hauling his own products in his own motor vehicle does not come within the purview of the Act and no provision for this exemption is necessary. The Act ap-

plies only to those who are carriers for compensation, and the exemption can refer only to farmers and dairymen hauling farm and dairy products for compensation. The same may be said with regard to those hauling lumber and logs from the forest to the shipping points."

To that extent the Supreme Court of South Carolina coincided with the view of the three-judge District Court in the case of *Nutt v. Ellerbe, supra,* wherein Judge Cochran, who delivered the opinion of the Court, disposed of the same contention in the following forceful language:

> "There is no doubt that the Legislature, so far as the Federal Constitution is concerned, may classify objects of taxation; but such classification must not be arbitrary, and must have some reasonable basis. Here the plaintiff is a private contract carrier for compensation. The State imposes upon him, for hauling freight and property over the highways of the State, a tax; but a farmer may haul farm products for compensation, a dairyman may haul dairy products for compensation, and lumber haulers may haul lumber and logs from the forests to shipping points for compensation, and are not required to pay any taxes or be subject to the regulations provided in the Act. We can perceive no reason whatever why the one should be taxed and not the others. They are all private contract carriers and not common carriers; they all use the highways of the State; they all obtain compensation for their services; and they all carry freight and property. The mere fact that the carrier in one case is a farmer or a dairyman hauling dairy or farm products, or a lumber hauler transporting lumber and logs, while in the plaintiff's case he is transporting various other kinds of property, furnishes no valid ground for discrimination. Indeed, under the terms of the Act, the plaintiff cannot even haul farm or dairy products, or lumber from the forests to shipping points, without paying the tax. No valid reason can be suggested why a tax should be imposed in one case and not in the

other. It is unnecessary to enter into any discussion of the numerous cases upon the subject of the right of the State to classify for taxation. It is sufficient to say that we think this case is controlled by the principles announced by the Supreme Court in *Smith v. Cahoon, Sheriff*, 283 U. S. 553.

"We do not consider it necessary to decide now whether the other exemptions mentioned in the statute would render it unconstitutional or not; but we do hold that the exempting of farmers, dairymen and lumbermen renders the statute invalid as to this plaintiff.

"Counsel for the defendants argues that the statute was not intended to exempt farmers, dairymen and lumbermen, except where they are hauling their own products; but the Act provides for the regulation and taxation of all private contract carriers for hire and expressly excludes farmers and dairymen hauling farm or dairy products, and lumber haulers transporting logs, etc., from its operation. There is not a syllable in the Act to indicate that the Legislature meant to confine the exemption to those engaged in hauling their own products. Indeed, if such was the intention, the provision for such exemption would be entirely superfluous, for the Act, by its very terms, does *not apply* to those engaged in hauling *their own products*, but only to those who are carriers *for compensation*."

The appellees' contention that the decision in the *Cahoon case, supra*, has, in this respect, been practically nullified by a later decision in *Baking Company v. Woodring*, 286 U. S., 352, 52 S. Ct., 595, 76 L. Ed., 816, is shown to be groundless in one sentence quoted therefrom by the Supreme Court of South Carolina in deciding the case at bar, to wit: "The distinction in the instant case is of a different sort. The statute does not attempt to impose any arbitrary discrimination between carriers who transport property for hire, or compensation, with respect to the class of products they carry. The exemption runs only to one who is carrying his own live stock

and farm products to market or supplies for his own use in his own motor vehicle."

The *Cahoon case* was expressly affirmed in the *Baking Company case, supra.* The Kansas statute, therein construed, purported to regulate all carriers of goods by motor vehicles, whereas the statute now under review seeks to regulate only those carriers of goods and property who haul for hire. Certainly, a classification of those who haul for hire on the one hand, and those who carry their own products in their own vehicles on the other hand, is an entirely reasonable and justifiable classification. But the difference between the Kansas statute, construed in *Baking Company v. Woodring, supra,* and the statute here under review, even upon the most cursory examination, is so great, and the similarity between the Florida statute, construed in *Smith v. Cahoon, supra,* and the South Carolina statute, is so striking, that it seems that the doctrine of *Smith v. Cahoon* should control the instant case.

POINT III

The burdens imposed by said Chapter 162 upon contract carriers who are engaged in interstate commerce are so onerous as to constitute an undue burden thereon, in violation of Section 8 of Article I of the Constitution of the United States.

It is alleged in the petition and admitted in the return and answer that the appellant is engaged in interstate commerce.

The license fees required of contract carriers under Section 8512 are based wholly on the "carrying capacity" of the vehicle, and, certainly as to those contract carriers engaged in interstate commerce, this tax is void, for the reason that it is not compensatory. It is a well recognized doctrine that a State can recover of motor vehicles using its highways in interstate commerce a reasonable compensation for the use of such highways, but, in the most recent cases of the United States Supreme Court upon this point, the rule is plainly stated that such compensation must be based strictly upon the amount and extent of the use of the highways or it will be held to be an undue burden on

interstate commerce; and that a flat charge based upon the capacity or weight of the vehicle alone is improper. Under the statutes of this State, this license tax must be paid by an interstate carrier for a single trip into South Carolina. The latest case on this point is that of *Interstate Transit, Inc., v. Lindsey*, 283 U. S., 183; 51 S. Ct., 380; 75 L. Ed., 953, in which it was said:

> "But since a State may demand of one carrying on an interstate bus business only fair compensation for what it gives, such imposition, although termed a tax, cannot be tested by standards which generally determine the validity of taxes. Being valid only if compensatory the charge must be necessarily predicated upon the use made, or to be made, of the highways of the State.
>
> *Clark v. Poor*, 274 U. S., 554; 47 S. Ct., 702; 71 L. Ed., 1199."

In the present Act the amount of the tax is not dependent upon such use. It does not rise with an increase in mileage traveled or even the number of passengers actually carried on the highways of the State. Nor is it related to the degree of wear and tear incident to the use of motor vehicles of different sizes and weights, except insofar as this is indirectly affected by carrying capacity. The tax is proportioned solely by the earning capacity of the vehicle. Accordingly there is here no sufficient relation between the measure employed and the extent or manner of use to justify holding that the tax was a charge made merely as compensation for the use of the highway by interstate buses.

See also, on this point, *Prouty v. Coyne*, 55 F. (2d), 289, decided by a three-Judge District Court of South Dakota in January of this year.

POINTS IV AND V

These points are abandoned, inasmuch as point IV related solely to the appellant Blalock, who has not perfected his appeal, and the Railroad Commission of South Caro-

lina has abandoned any further effort to collect the gross receipts taxes provided for by Section 34 of Act No. 897 of 1932.

POINT VI

All of the arguments heretofore advanced are applicable to this point and further repetition is deemed unnecessary.

CONCLUSION

In accordance with the foregoing, it is respectfully submitted that the decision of the Supreme Court of South Carolina should be reversed, and the statute in question be declared to be unconstitutional and void; at least insofar as it attempts to regulate and relate to contract carriers.

Respectfully submitted,

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APPENDIX A

South Carolina Statute Now Before This Court for Review.	Florida Statute which was held unconstitutional in *Smith v. Cahoon*, 283 U. S. 553; 51 S. Ct., 582; 75 L. Ed., 1101.
Chapter 162, Code of Laws of South Carolina, 1932.	Chapter 13,700, Laws of Florida, 1929.
Act No. 170 of 1925 XXXIV Statutes at Large, 252, as Amended.	(See Compiled General Laws of Florida, Section 1335).
An Act Providing for the Regulation, Supervision, and Control of Persons, Firms, Corporations, and Associations Owning, Controlling, Operating or Managing Motor Vehicles Used in the Business of Transporting Persons or Property for Compensation on the Improved Public Highways of the State, Which Are, or May Hereafter be Declared to be Parts of the State Highway System, or Any of the County Highway Systems, or the Streets of Any City or Town, and Prescribing License Fees and Providing for the Disposition of the Revenue Raised by the Same.	An Act Providing for the Supervision and Regulation of Person, Firms, Corporations and Associations Owning, Controlling, Operating or Managing Motor Vehicles Used in the Business of Transporting Persons or Property for Compensation Over the Public Highways of the State: Defining Auto Transportation Companies and Providing Supervision and Regulation Thereof by the Railroad Commission of the State of Florida and Providing for the Enforcement of the Provisions of this Act and for the Punishment of Violations Thereof Imposing a Mileage Tax and Providing for the Disposition of the Revenue Raised by the same; and Repealing all Acts Inconsistent With the Provisions of this Act.
SECTION 8507. TERMS DEFINED.—(a) The terms "corporation" wherever used in sections 8507 to 8524 means a corporation, company, as-	(1) Definitions: (a) The word "Commission" means the Railroad Commission of this State.

sociation or joint stock association. (b) The term "person" wherever used in sections 8507 to 8524, means an individual, a firm or copartnership. (c) The term "commission" wherever used in sections 8507 to 8524, means the South Carolina Railroad Commission. (d) The term "motor-vehicle carrier" wherever used in sections 8507 to 8524, means every corporation or person, their lessees, trustees or receivers, owning, controling, operating or managing any motor propelled vehicle not usually operated on or over rails, used in the business of transporting persons or property for compensation over any improved public highway or streets as hereinafter defined, in this State. (e) For the purpose of sections 8507 to 8524, all vehicles equipped to carry a load and which are attached to and drawn by a motor vehicle, are hereby defined as trailers, and shall be classed as motor vehicles and subject to the provisions of sections 8507 to 8524. (f) The term "improved public highway" wherever used in sections 8507 to 8524 means every improved public highway in this State which is or may hereafter be declared to be a part of the State Highway System or any county highway system, or the streets of any city or town.

(b) The term "corporation" when used in this Article means a corporation, a company, association, or joint stock association.

(c) The term "person" means an individual, firm or co-partnership.

(d) The word "certificate" means the Certificate of Public Convenience and Necessity authorized to be issued under the provisions of this Article.

(e) The term "public highway" means every public street, road or highway in this State.

(h) The term "auto transportation company" when used in this Article means every corporation or person, their lessees, trustees, or receivers, owning, controlling, operating or managing any motor-propelled vehicle not usually operated on or over rails used in the business of transporting persons or property for compensation, or as a common carrier over any public highway in this State between fixed termini or over a regular route: provided, that the term "auto transportation company" as used in this Article, shall not include corporations or persons engaged exclusively in the transportation of children to or from school, or any transportation company engaged exclusively in the transporting agricultural, horticul-

tural, dairy or other farm products and fresh and salt fish and oysters and shrimp from the point of production to the assembling or shipping point en route to primary market, or to motor vehicles used exclusively in transporting or delivering dairy products or any transportation company engaged in operating taxicabs, or hotel buses from a depot to a hotel in the same town or city. Those passenger buses that operate over a definite route on regular schedules and which are regulated by the legislative body of a city, furnishing public transportation wholly within the corporate limits of any city or between cities whose boundaries adjoin, are hereby expressly excluded from the provisions of this Article.

(g) The words "between fixed termini or over a regular route" when used in this Article means the termini or route between or over which any auto transportation company usually or ordinarily operates any motor vehicle, even though there may be departures from said termini or route, whether such departures be periodical or irregular, whether or not any motor propelled vehicle is operated by any auto transportation company "between fixed termini or over a regular route"

within the meaning of this Article, shall be a question of fact to be determined by the Commission, and the finding of the Railroad Commission thereon shall be final except as to appeal and review as hereinafter provided.

(f) The term "motor vehicle" shall include all vehicles or machines propelled by any power other than muscular used upon the public highways for the transportation of persons or property for compensation as common carriers, except motor vehicles used exclusively in transporting children to or from school, and motor vehicles used by a transportation company engaged exclusively in transporting agricultural, horticultural, dairy or other farm products from the point of production to the primary market, or to motor vehicles used exclusively in transporting or delivering dairy products, or by any transportation company engaged in operating taxicabs, or hotel buses to or from a depot to a hotel in the same town or city.

(i) For the purpose of this Article, all vehicles equipped to carry a load which are attached to and drawn by a motor vehicle are hereby defined as "trailers" and shall be classed as motor

vehicles and subject to the provisions of this Article.

(j) The term "width of tread" means the width of the vehicle measuring from the center of tread of the outside tire to the center of tread of the opposite outside tire.

SECTION 8508. TRANSPORTATIONS BY MOTOR VEHICLE FOR COMPENSATION REGULATED—EXCEPTIONS — PERMITS.—No corporation or person, their lessees, trustees or receivers, shall operate any motor-propelled vehicle as hereinbefore defined for transportation of persons or property for compensation, on any improved public highways in this State, except in accordance with the provisions of Sections 8507 to 8524, and such operation shall be subject to control, supervision and regulation by the commission in the manner provided by Sections 8507 to 8524: *Provided, however,* That nothing in Sections 8507 to 8524 contained shall apply to motor vehicles while used exclusively for transporting persons to and from schools, Sunday schools, churches, or religious services of any kind, or to or from picnics or upon special prearranged excursions, or to United States mail carriers operating star routes, while engaged solely in carrying mail, or to farmers or

dairymen, hauling dairy or farm products; or lumber haulers engaged in transporting lumber and logs from the forest to the shipping points.

SECTION 8509. CERTIFICATE FROM COMMISSION REQUIRED —LICENSE FEE—CLASSES OF CERTIFICATES —ISSUE—HEARING.—No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Sections 8507 to 8524, a certificate and paid the license fee herein required. The Commission shall have the power to grant six classes of such certificates after application therefor has been made in writing by the owner of such vehicles upon blanks provided by the Commission, and after such hearing as the Commission may deem proper.

To the granting of any certificate the Commission shall hear any objections which may be filed thereto with the Commission by any affected party. The said six classes of certificates shall be respectively designated Certificate A, Certificate B, Certificate C, Certificate D, Certificate E, Certificate F: *Provided, however,* That the Commisison shall grant a certificate as a

(2) Certificates to operate; suspension.

No auto transportation company shall operate any motor vehicle for the transportation of persons or property for compensation on any public highway in this State without first having obtained from the Railroad Commission a certificate that the present or future public convenience and necessity requires or will require such operation, but no certificate shall be required for operation exclusively within the limits of an incorporated city or town.

matter of right where it appears that the applicant was operating in good faith on or before the effective date of Sections 8507 to 8524, but was not operating immediately prior thereto or on said date because of impassable roads.

The Railroad Commission may at any time for a good cause suspend and upon notice to the grantee of any certificate and opportunity to be heard, revoke, alter or amend any certificate issued under the provisions of this section.

SECTION 8510. ISSUE OF DIFFERENT CLASSES OF CERTIFICATES.—* * * The commission shall have power to grant a certificate D for property-carrying vehicles, which will operate upon regular routes and schedules over said highways, and the commission may grant a certificate E for property-carrying vehicles which will not operate upon any particular route or schedule. The provisions of Sections 8507 to 8524 governing the granting of certificates A and C, shall apply to certificates D and E. In the granting of either a certificate A, B, or D, the commission may issue same for partial exercise only of the privileges sought, but without alteration of the license charges fixed thereon. The commission shall have power to grant a certificate F to any person, firm or corpora-

(3) Application for certificate to operate; hearing; contents of certificate.

Application for such certificate of Public Convenience and Necessity shall be made by such corporation, person, firm or association, their lessees, trustees, or receivers to the Railroad Commission; such application shall be in writing verified by the applicant and shall specify the following matters:

1. The name and address of applicant and the names and addresses of its officers, if any.

2. The public highway or highways over which, and the fixed termini or the regular route, if any, between which, or over which applicant intends to operate.

3. The kind of transportation, whether passenger or freight, or both, in which ap-

tion, proposes to engage in the business commonly known as contract hauling of freight or property, and when such applicant does not propose to operate upon a regular schedule or over a regular route, or to solicit or receive patronage along the route.

plicant intends to engage, together with a brief description of each vehicle and motor power which applicant intends to use, including the seating capacity thereof, if for passenger traffic, or tonnage, if for freight traffic, and including the size and weight of such vehicles.

4. The proposed time schedule of operation.

5. The schedule or tariff showing all passenger fares or freight rates proposed to be charged between the several points or localities to be served.

6. Whether or not the said applicant is or has been operating on said routes or other routes in the State, and for what length of time and upon what time schedule of operation and upon what schedule or tariff for passenger fares or freight rates.

Upon filing of said application the Railroad Commission shall fix a time for hearing of said application, which shall not be less than five days nor more than thirty days subsequent to the filing of said application, and no application shall be granted or a Certificate of Convenience and necessity issued without a hearing by the Railroad Commission. Notice of such hearing shall be given to the applicant and to all transportation companies serving any part of the route between the fixed termini and to the

mayor or chief magistrate of each city and town in or through which the applicant desires to operate at least five full days prior to said hearing, which said notice shall recite the fact of the filing of such application, the time and the place of the hearing of the same. A copy of said notice shall be mailed at least five days prior to the time for such hearing to any transportation company holding a Certificate of Public Convenience and Necessity and operating over the route or any part of the route specified in said application. At the time specified in said notice, or at such time as may be fixed by the Commission a public hearing upon said application shall be held by the Commission. At or after such hearing the Commission may issue a Certificate of Public Convenience and Necessity, as prayed for or refuse to issue the same, or may issue the same with modification or upon such terms and conditions as in its judgment the public convenience and necessity may require: Provided, that in granting application for certificate, the Commission may take into consideration the length of time the applicant has operated a scheduled motor vehicle service between the termini named in the application; the general standard of the service maintained during this period; the

reliability of the applicant and his sense of responsibility toward the public as shown during the period of his operation; his court record as well as the effect that the granting of such certificate may have upon other transportation facilities within the territory sought to be served by such applicant, and also the effect upon transportation as a whole within said territory, and any other matters tending to qualify or disqualify him as a common carrier: Provided, that a Certificate of Public Convenience and Necessity shall upon hearing be granted as a matter of right to such Auto Transportation Companies operating in good faith on the 19th day of April, 1929, over the route for which such certificate shall be sought, who shall comply in full with the provisions of this Article.

When application is made by an Auto Transportation Company for a certificate to operate in a territory or on a line already served by a certificate holder under this Article the Commission shall grant same only when the existing certificate holder or holders serving such territory fail to provide service and facilities to the satisfaction of said Commission.

Each Certificate of Convenience and Necessity issued under the provisions of this Article shall contain the fol-

lowing matters:

1. The name of the grantee.

2. The public highway or highways over which, and the fixed termini between which the grantee is permitted to operate.

3. The kind of transportation, whether passenger or freight, or both, in which the grantee is permitted to engage, together with a statement of the number of vehicles to be operated and the maximum seating or tonnage capacity of the vehicle or vehicles which the grantee is permitted to operate.

4. Such additional provisions and limitations as the Commission shall deem necessary or proper to be inserted in the certificate.

No certificate of Public Convenience and Necessity issued under the provisions of this Article may be assigned or transferred without the consent of the Railroad Commission authorizing such transfer.

No certificate shall be issued for the operation on any highway in the State of any motor vehicles of greater width of tread than eighty-four (84) inches and greater loaded weight than eighteen thousand (18,000) pounds, for passenger or freight traffic. The Commission is hereby authorized to prescribe the maximum width of tonneau or body including load of motor vehicles used in either

passenger or freight service, taking into consideration the width of road over which the same is to be operated. And the said Commission is further authorized to suspend temporarily, when the condition of the public highway requires it, the operation of motor vehicles, either for passenger or freight transportation, along and over any public highway of the State, and notice of such suspension shall be given to every holder of a certificate for operation over the said highway and to the public by publication in some newspaper or newspapers in general circulation in the territory of the route.

SECTION 8511. INDEMNITY INSURANCE OR BOND REQUIRED.—The commission shall, in the granting of a certificate, require the applicant to procure and file with said commission liability and property damage insurance, or surety bond with some casualty or surety company authorized to do business in this State, on such motor vehicle or vehicles to be used in the service aforesaid, in such amount as the commission may determine, insuring or indemnifying passengers or cargo and the public receiving personal injury by reason of any act of negligence, and for damage to property of any person other than the assured; such policy or bond to contain such

(4) Bonds required to be given.

The Commission shall, at the time of granting a certificate to operate any transportation company for transporting persons or property, fix and determine the amount of the bond to be given by the applicant for the protection, in case of passenger vehicle, of the passengers and baggage carried in said vehicle and of the public against injury caused by negligence of the person or corporation operating the said vehicle, and in the case of the vehicle transporting freight, for the protection of the said freight so carried and of the public against injuries received through negligence of the per-

conditions, provisions, and limitations as the commission may prescribe and the same shall be kept in full force and effect, and failure to do so shall be cause for the revocation of such certificate: *Provided, however,* That said motor carriers shall be responsible for loss or damage to baggage only when checked with the operator of the vehicle: *Provided, further* That no applicant for a certificate C shall be required to file a bond not exceeding the sum of one thousand ($1,000.00) dollars: *Provided,* That in case the owner of the operated motor carrier is a resident of the State or is a domestic corporation, action may be brought against such party in any county through which the motor carrier operated. In case of non-resident or foreign corporations action may be brought in any county of the State: *Provided, further,* Jurisdiction may be acquired by service of two copies of the summons and complaint upon the secretary of the railroad commission, who shall forthwith transmit one copy by mail to the last known address of the defendant or one of the defendants, if there be more than one.

son or corporation operating said freight carrying vehicle; and it shall be the duty of the applicant to procure and file with the Commission the said bond for liability and property damage, including loss of baggage when same has been checked in accordance with the rules prescribed by the Commission, giving the said bond or bonds in a surety company authorized to do business in the State of Florida, or deposit, in lieu of said surety bonds, bonds of the United States Government or of any city or county in the State of Florida approved by the said Commission. The said bonds shall be conditioned to indemnify passengers and the public receiving personal injuries by any act of negligence, and for damages to property of any person other than the assured; and such bonds shall contain such conditions, provisions, and limitations as the Commission may prescribe, and said bonds shall be payable to the State of Florida, and shall be for the benefit of and subject to action thereon by any person or persons who shall have sustained an actionable injury protected thereby, notwithstanding any provisions in said bonds to the contrary, and every bond or insurance policy given shall be conclusively presumed to have been given according to and to contain all

of the provisions of this Article. And no certificate shall be valid until such bond has been filed and approved and no such bond so accepted shall be cancelled by the Company issuing the same except upon ten days' notice to the Commission; and upon such notice being given by the company issuing said bond or bonds, the certificate of the person or corporation giving bond shall be revoked, unless a new bond shall be filed and accepted before the date for the cancellation of the said bond: Provided, however, that the applicant may, in the discretion of the Commission, be allowed to file in lieu of bond an insurance policy which shall be approved by the Commission, with some casualty company or insurance company or casualty or insurance carrier authorized to do business in the State of Florida.

SECTION 8512. APPLICATIONS — LICENSE FEES. — Every motor vehicle carrier now operating, or which shall hereafter operate in this State, shall, as soon as such certificate is issued, and annually on or before each succeeding January 1st as long as such certificate remains in force, present same, with any changes which have been made therein by the commission, to the "State Official" according to the method and provision prescribed by law

(14) Mileage Tax. Books and forms of account.

There shall be collected by the Comptroller of the State from every auto transportation company as herein defined to which has been granted a Certificate of Public Convenience and Necessity permitting it to engage in the transportation of passengers or freight, or both, a mileage tax of one-half cent per mile on all buses with a capacity of 10 passengers or less and a mileage tax of

for owners of all motor vehicles to make an application in writing for registration and license, and state in said application, beside the other matters by law prescribed, the following: * * *

In case of application for certificate D, the applicant shall state in said application, besides the other matters by law provided, the carrying capacity as given by manufacturer of such motor vehicles; the route on which said motor vehicle is to be used; whether reserve or substitute cars are maintained by the applicant to be used only in emergencies, and, if so, the number of such reserve and substitute cars and a complete description of each, and when in use same to be designated by a special marker to be furnished by the commission; the length of the route in miles on improved public highways in this State; the weight of the vehicles when empty; the schedule under which it shall operate during the ensuing year. And for all such motor vehicles the following annual fees shall be paid to the commission for license issued by it, and no other additional license fee or license tax shall be charged the motor vehicle carrier by the State; nor shall any city, town or county impose a license fee or license three-fourths cent per mile on all buses with a capacity of not more than 20 passengers nor less than 10 passengers and a mileage tax of one cent per mile on all buses of the capacity of more than 20 passengers; and a mileage tax of one cent per mile on all trucks with a loaded capacity of less than 5,500 lbs. and a tax of two cents per mile on all trucks with a loaded capacity of 5,500 lbs. or more coming within the terms of this Article, for every mile traveled by the motor vehicles of such auto transportation company over the public highways of this State. This tax shall be paid quarterly beginning October 1, 1929; Provided, that at the time of issuing said Certificate of Public Convenience and Necessity and at the beginning of each calendar quarter thereafter the Comptroller of the State shall collect from each holder of such certificate the sum of Seventy-five Dollars, as an advance payment upon the mileage tax herein levied for the ensuing quarter which said amount shall at the end of the quarter be credited to said holder of such certificate and the difference between the said amount and the correct amount of said tax shall be adjusted by the Comptroller with the said holder of such certificate.

tax on such motor-vehicle carrier.

Class X. Motor vehicles weighing three tons or less, including carrying capacity, shall each be charged and pay one-eighth of a cent per each ton mile multiplied by the total number of miles that said application shall show will be travelled by such motor vehicle over the improved public highways of this State during the year for which said license is issued.

Class Y. Motor vehicles weighing over three tons and not over five tons if equipped with solid tires, not more than seven tons if equipped with pneumatic tires, including carrying capacity, shall each be charged and pay one-quarter of a cent per each ton mile, multiplied by the total number of miles that said applicant shall show will be travelled by such motor vehicle over the improved public highways of this State during the year for which said license is issued.

Class Z. Motor vehicles weighing over five tons and not over eight and one-half tons if equipped with solid tires, nor more than nine tons if equipped with pneumatic tires, including carrying capacity, shall each be charged and pay one-half of a cent per each ton mile, multiplied by the total number of miles the said applicant shall show will be travelled by such motor vehicle over the improved public highways of this State during the year for which said license is issued.

In order to ascertain the bus mileage of every passenger bus and the truck mileage of every freight truck traveled by the holders of certificates for such purpose the Comptroller of the State shall prescribe the books and forms of accounts to be kept by the said holder of such certificate and at the end of each current month the said holder of a certificate shall file with the Comptroller, and a duplicate thereof with the Commission, a statement verified by an officer, if the holder of such certificate is a corporation, or if the holder of such certificate is a person then by such person, showing the mileage made by said holder of such certificate during the said month: Provided, further, that the mileage tax provided for in this section shall be in lieu of all other taxes and fees of every kind, character and description, except ad valorem taxes levied upon the property of such auto transportation companies and except the gasoline tax and except the motor vehicle license tax as now provided for in section 1285; said motor vehicle license tax to be paid into the State Treasury and disposed of as provided for in Section 1304. The books and records of all auto transportation companies shall be at all times open to inspection of

plication shall show will be travelled by such motor vehicle over the improved public highways of this State during the year of which said license is issued: *Provided,* That the minimum fees for vehicles hereunder shall be as follows: For vehicles of not over one ton carrying capacity, twenty-five ($25.00) dollars; for vehicles of carrying capacity of over one ton and not more than two tons, fifty ($50.00) dollars; for vehicles of carrying capacity of over two tons and not over three tons, one hundred ($100.00) dollars; for vehicles of carrying capacity of over three tons, and not over four tons, one hundred fifty ($150.00) dollars; for vehicles of carrying capacity of over four tons and not over five tons, two hundred fifty ($250.00) dollars, if equipped with pneumatic tires; if equipped with solid tires these minimum fees shall be doubled. Property-carrying vehicles, equipped with solid tires, weighing over eight and one-half tons, including carrying capacity, shall not be licensed. The provisions of Sections 8507 to 8524 as to motor vehicles carrying property shall not apply to baggage of passengers being transported by holders of certificates A, B, and C.

The holders of certificates E and F shall annually on or the Comptroller of the State and of the Commission, or any agent by them appointed for such purpose, and if the said holder of such certificate shall fail to make the monthly reports herein prescribed to the Comptroller and to the Commission, or shall fail to keep said books and records as prescribed by said Comptroller of the State, then upon notice in writing to said holder of such certificate of such default or defaults and the failure of the said holder of such certificate within five days to make said statements or to keep said records properly the certificate shall be revoked by the Commission, but the Commission shall, if requested by the said holder of such certificate, order a hearing upon the question of the revocation of such certificate. The Comptroller of the State shall keep a true and accurate list of all auto transportation companies to whom certificates shall be issued with the post office address of each.

before January 1st of each year pay to the commission the following fees: for vehicles of carrying capacity of not over one and one-half tons, thirty ($30.00) dollars; for vehicles of carrying capacity of over one and one-half tons and not over two tons, sixty ($60.00) dollars; for vehicles of carrying capacity of over two tons and not over three tons, one hundred twenty ($120.00) dollars; for vehicles of carrying capacity of over three tons and not over four tons, two hundred ($200.00) dollars; for vehicles of carrying capacity of over four tons and not over five tons, four hundred ($400.00) dollars; for vehicles equipped fully with pneumatic tires. For vehicles equipped fully or partially with solid tires these fees shall be doubled.

The fees required of holders of certificates C, E, and F, shall be in addition to any license tax, or license fee charged by any municipality. The provisions prohibiting the additional tax or license fee as provided for holders of certificates A, B, and D, shall not apply to classes C, E, and F. The fees herein, however, shall be in lieu of all other State license fees. *Provided*, That on and after January 1, 1931, the fees prescribed in this section may be paid semi-annually in advance on

or before January 1st and July 1st of each year, *Provided, however,* That the provisions hereof shall not be taken or held to repeal Section 7385 or to repeal Section 8530.

SECTION 8516. POWERS OF COMMISSION.—The commission is hereby vested with power and authority and it shall be their duty to supervise and regulate every motor carrier in this State; to fix or approve the rates, fares, charges, classification and rules and regulations pertaining thereto, of each such motor carrier: *Provided, however,* That the rate now obtaining by the respective motor carriers shall remain in effect until such time, when pursuant to complaint and proper hearing, the commission shall have determined that said rate or rates are unreasonable: *Provided,* That the said commission shall fix as to class certificate C a maximum rate only.

(5) Powers of Railroad Commission.

The Railroad Commission of the State of Florida is hereby vested with power and authority to supervise and regulate every auto transportation company in the State, to fix or approve the rates, fares, charges, classifications, rules and regulations for each auto transportation company, to regulate the service and safety of operations of each such auto transportation company; to prescribe a uniform system and classification of accounts to be used, which among other things, shall set up adequate depreciation charges; to require the filing of annual and other reports and all other data by said auto transportation companies; and to supervise and regulate auto transportation companies in all other matters affecting the relationship between such companies and the traveling and shipping public. The Commission shall have power and authority by order to prescribe rules and regulations applicable to any and all such auto transportation companies. The Commis-

sion, in the exercise of the jurisdiction conferred upon it by this Article, shall have power and authority to make orders and prescribe rules and regulations affecting such auto transportation companies notwithstanding the provisions of any ordinance or permit of any incorporated city or town, city and county, or county, or village, and in case of conflict between any such order, rule or regulation, any such ordinance or permit, the order, rule or regulation of the Commission shall in each instance prevail. No municipality shall have the right to require such auto transportation company to furnish any bond or insurance policy, or pay any license, fee or tax except as herein provided.

(6) Schedule of rates, fares, etc., to be filed with Railroad Commission.

Upon the taking effect of this Article, it shall be the duty of every such auto transportation company to forthwith file with its application for a certificate of public convenience and necessity a schedule of its rates and fares, and a time schedule of all motor vehicles operated, all of which shall be kept on file by the Commission, subject to public inspection. The Commission shall require each auto transportation company to keep open for

public inspection at designated offices so much of said schedule of rates and fares and time schedules as it deems necessary for the public information.

Whenever such rates or fares or time schedules are found to be unreasonable, the Commission, upon its own motion, or upon complaint, shall upon hearing as herein provided, prescribe reasonable rates and time schedules to take the place of those found unreasonable, and such new rates shall be filed in place of the rates of schedules superseded. No rates or time schedules filed with the Commission shall be changed by any such auto transportation company without an order of the Commission sanctioning the same. It shall be unlawful for any transportation company to collect or receive a greater or less rate or charges for any service rendered by it than the transportation charge made in the schedules on file with the Commission, and no new rates shall take effect until the date named by the Commission.

SECTION 8517. USE OF FEES COLLECTED— APPORTIONMENT —DISTRIBUTION.—It shall be the duty of the railroad commission to keep a separate account of all moneys collected under this chapter and any and all moneys so collected

(15) Comptroller to keep separate account of collections.

It shall be the duty of the Comptroller of the State to keep a separate account of all moneys collected under this Article and any and all mon-

shall be paid into the State Treasury monthly. Each of the payments aforesaid shall be accompanied by a statement showing the amount collected for the use of the roads comprising the State Highway System, and the amount collected for the use of the roads comprising the county highways systems of each county, and the streets of each city or town; the amount in each case to be computed upon a mileage basis. The amount so remitted which was collected for the use of the State Highway System shall be placed to the credit of the State Highway Fund, and the amount so remitted which was collected for the use of the county highways systems and the streets of cities or towns shall be s e m i - annually distributed among and paid to such counties, cities or towns which maintain such highways or streets over which said motor vehicles shall operate, as shown by such statement to be entitled thereto; said payments to be made on warrants of the State Auditor to the respective treasurers of the counties, cities or towns: *Provided,* In such distribution there shall be deducted the proportionate cost of administration of Sections 8507 to 8524.

eys so collected after deducting the necessary expenses incurred by the Comptroller of the State in carrying out the provisions of this Article shall be paid to the State Treasurer monthly. The State Treasurer shall credit the Railroad Commission fund with five per cent (5%) of the moneys so collected and paid to him to cover the expenses of the administration of this Article by the said Commission, and shall distribute the balance as follows: To each county whose highway system is used as a part of the route authorized in the Certificate of Public Convenience and Necessity issued to any auto transportation company its part of said balance in the proportion that the bus mileage traveled over its highway system bear to the entire bus mileage traveled by the motor vehicle of said auto transportation company; such amounts shall be quarterly remitted to the County Commissioners of each of said respective counties by warrant of the Comptroller on the State Treasurer, in like manner as other payments by State warrants are made, to be paid by the said County Commissioners to the bond trustees of the county bonds, to be used by said trustees to pay the interest on and provide a sinking fund to retire

the county bonds issued for the purpose of constructing the State system or the county system of good roads within said county or to be used by said county commissioners for said purpose.

(16) Permission to employ clerks and inspectors.

The Commission shall employ such necessary clerks, inspectors and employees on such terms and conditions as said Commission shall deem advisable and necessary to carry out the provisions of this Article.

SECTION 8518. REVOCATION, ETC., OF CERTIFICATES.—The commission may, at any time, by its order, duly entered after a hearing had upon notice to the holder of any certificate hereunder, and an opportunity to such holder to be heard, at which time it shall be proved that such holder has wilfully made any misrepresentation of a material fact in obtaining a certificate, or wilfully violated or refused to observe the laws of this State touching motor-vehicle carriers or any of the terms of his certificate, or any of the commission's proper orders, rules or regulations, suspend, revoke, alter or amend any certificate issued under the provisions of Sections 8507 to 8524; but the holder of such certificate shall have the right of appeal to any court of com-

(7) Violation of laws, regulations, etc.

The Commission may upon complaint, or upon its own motion, that any auto transportation company is violating the provisions of this Article or any of the rules or regulations prescribed by the Commission, or is violating any of the laws of the State, or any requirement of its certificate of Public Convenience and Necessity, issue its order to the said auto transportation company notifying it to appear before the Commission at a fixed time and place, at which time and place the Commission shall investigate the complaint made, and if it shall be satisfied after such hearing that the said auto transportation company holding a certificate has wilfully violated or refused to observe

petent jurisdiction; *Provided, however,* That a certificate when once granted by the commission shall not hereafter be suspended, revoked, altered or amended for any other cause than stated in Sections 8507 to 8524.

the laws of this State touching motor vehicles or any of the terms of the certificate issued to the said auto transportation company, or any of the Commission's orders, rules or regulations, the said Commission may suspend, revoke, alter, or amend any certificate issued under the provisions of this Article to the said auto transportation company; but the holder of such certificate shall have the right to appeal to the Supreme Court of the State as is now provided by law for appeals from orders relating to railway or street railway corporations.

(8) Rules and regulations made by Commission within powers.

Every rule, regulation, decision, order or requirement made by the said Commission under the provisions of this Article shall be deemed and held to be within its jurisdiction and powers, and to be reasonable and just and such as ought to have been made in the premises, and to have been properly made and arrived at in due form of procedure, and such as can and ought to be executed, unless the contrary plainly appears on the face thereof or can be made to appear by clear and satisfactory evidence, and shall not be set aside or held invalid unless the contrary so appears. All presumption

shall be in favor of every action of the said Commission and all doubts as to its jurisdiction and powers shall be resolved in its favor. If, in any proceeding to enforce or to attack any rules, regulations, decisions or orders, any part thereof shall be found invalid the Court shall proceed to enforce such portion thereof as may be valid if the same can be done.

(9) Practice, procedure and evidence in proceedings before Commission.

In all matters of practice and procedure, and all matters of evidence and the rules of evidence and all matters involving the effect of evidence in proceedings before the Commission under the provisions of this Article, and in proceedings by the said Commission to enforce its rates, rules, regulations, decisions, orders and requirements made hereunder, and in proceedings against the said Commission in relation to rates, rules, regulations, decisions, orders and requirements prescribed by it, all provisions of law now existing or which may from time to time be prescribed for observance in like cases arising under the law for the regulation of railroads, railroad companies and common carriers, shall govern and control.

(10) Judicial Powers of Commission.

The Commission shall, so far as the constitution of this State permits, exercise all such judicial powers as may be necessary to enable it to enforce or perform any duty, power or function conferred on it by this Article.

(11) Rate of speed in operation of motor vehicles.

No Auto Transportation Company shall operate any motor vehicle on the public highways of this State at a speed in excess of the speed now permitted by the laws of this State, but motor vehicles used exclusively for carrying of passengers may be operated at any rate not exceeding forty-five (45) miles per hour.

(12) Departure from regular route in operation of motor vehicles.

An auto transportation company holding a Certificate of Public Convenience and Necessity as provided for in this Article may depart from the route described in such certificate if compelled to detour on account of the closing of roads, or for the purpose of transporting chartered or excursion parties to points not on such route, and not exclusively on a route served by any other certificate holder, and may receive for such service compensation as may be agreed upon between

SECTION 8520. OPERATION WHILE UNDER INFLUENCE OF LIQUOR OR DRUGS—FAILURE TO GIVE HALF OF ROAD—REVOCATION OF LICENSE.—Every officer, agent, or employee, of any corporation and every other person who wilfully violates or fails to comply with, or who procures, aids or abets in the violation of any provision of Sections 8507 to 8524 or who fails to obey, observe or comply with any lawful order, decision or rule or regulation, direction, demand or requirement of the Commission or any part or provision thereof, or who has operated any motor vehicle for the transportation of persons or property for compensation while under the influence of intoxicating liquors or drugs, or in such a reckless manner or at such rate of speed as would endanger the passengers or any other person along such highway or shall fail to give half the road on meeting a vehicle, shall be guilty of a misdemeanor and punishable by a fine of not less than Twenty-five ($25.00) Dollars nor exceeding One Hundred ($100.00) Dollars, or imprisonment for not less than ten (10) days nor more than thirty (30) days.

SECTION 8521. SECTIONS INDEPENDENT.—If any section, the carrier and the party or parties so served.

(13) Every officer, agent or employee of any corporation and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of this Act, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, or who fails to observe any regulation as to maximum speed of operation or maximum weight of load, of the Railroad Commission or who procures, aids, or abets any corporation or person in his failure to obey, observe or comply with any such order, maximum speed of operation, maximum weight of load, decision, rule, direction, demand, or regulation, or any part or provision thereof, is guilty of a misdemeanor and is punishable by a fine not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. (Section 7794 (2) Compiled General Laws of Florida, 1930 Supplement.)

sub-section, sentence, clause or phrase of Sections 8507 to 8524 is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of Sections 8507 to 8524.

SECTION 8522. SECTIONS NOT APPLICABLE UNLESS TRANSPORTATION A BUSINESS. —Nothing contained in Sections 8507 to 8524 shall be construed to prevent the use or hiring of any motor vehicle for the purpose of making some particular trip, where the owner of such vehicle does not make such transportation a business.

(18) Effect of partial invalidity of law.

If any section, sub-section, sentence, clause or phrase of this law is for any reason held unconstitutional such decision shall not affect the validity of the remaining portions of this law. In case the provisions of this law providing for the distribution among the counties of this state of the balance of the net proceeds of all moneys collected under this Article after the five per cent (5%) thereof has been credited to the Railroad Commission fund, is, for any reason declared or found to be invalid, then in that event such balance of such proceeds above described shall be paid into the State Road License Fund and shall be used for the construction and maintenance of State roads under the direction of the State Road Department.

(19) Rates fixed in tariffs on file to be adhered to.

No auto transportation company shall charge, demand, collect, or receive a greater or less or different compensation for the trans-

portation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such company as specified in its tariffs filed with and approved by the Commission and in effect at the time; nor shall any such company refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, or extend to any person, firm, copartnership, or corporation, or other organization, or association, privileges or facilities in the transportation of persons or property except such as are regularly and uniformly extended to all; and no such company shall directly or indirectly, issue, give, tender, or honor any free fares except to its bona fide officers, agents, employees and members of their immediate families; provided, that auto transportation companies under the Article may exchange, free transportation within the limits of this section.

(20) Number plates.

Distinguishing number plates shall be prescribed and furnished by the Commission, which plates shall be displayed at all times upon each motor vehicle authorized for operation under this Article, for which the Commission shall charge and each auto transportation

company shall pay a fee of fifty cents each. Transfers of number plates from one vehicle to another are hereby prohibited. The fees derived from the issuance of such number plates shall be paid into the State Treasury to the credit of the Railroad Commission fund.

SECTION 8523. REPEALING CLAUSE.—The provisions of Sections 8507 to 8524 shall not be taken or held to repeal Section 7385. All Acts or parts of Acts inconsistent herewith are hereby repealed to the extent of said inconsistency, but nothing herein contained shall be construed to relieve any motor vehicle as herein defined from any regulation otherwise imposed by law or lawful authority.

SECTION 8525. ADDITIONAL ANNUAL LICENSE FEE REQUIRED OF OWNER OR OPERATOR OF MOTOR VEHICLES ENGAGED IN TRANSPORTING PERSONS OR PROPERTY FOR COMPENSATION.—(1) AMOUNT.—Before operating upon the public highways of this State, every owner or operator of motor vehicles engaged in the business of transporting persons or property for compenstaion on the public highways of the State of South Carolina under the provisions of Sections 8507 to 8524, inclusive, shall, in addition to the license fees imposed by said sections,

SECTION 21. All laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.

pay to the State Highway Department an annual license in an amount equal to or the same as the annual license paid by and required of the owner of motor vehicle under the provisions of Section 5894.

(2) PURPOSE OF THIS SECTION.—It is the purpose of this section that the annual license herein imposed shall be in addition to the license fees imposed by Sections 8507 to 8524.

(3) DISPOSITION OF FUNDS.—All funds derived by the State Highway Department from the provisions of this section shall be credited to the State Highway Fund and used for the construction and maintenance of the State Highway System.

(4) VIOLATION A MISDEMEANOR — PENALTY. — Any person, firm or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars or be imprisoned not less than ten (10) nor more than thirty (30) days within the discretion of the court.

SECTION 8527. CONTROL OF MOTOR VEHICLES USED FOR HIRE TRANSFERRED TO RAILROAD COMMISSION.—All the powers and duties imposed upon the highway commis-

(17) Operation and effect of law.

Neither this Article nor any provision hereof shall apply or be construed to apply to commerce with foreign na-

sion of the State of South Carolina with reference to the regulation, supervision and control of persons, firms, corporations and associations owning, controlling, operating or managing motor vehicles used for hire under the provisions of Sections 8507 to 8524 are hereby transferred to and devolved upon the South Carolina Railroad Commission. The term "commission" wherever used in said sections shall hereafter mean the South Carolina Railroad Commission.

tions or commence among the several States of the union except insofar as the same may be permitted under the provisions of the Constitution of the United States and the Acts of Congress.